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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,412	02/11/2004	Michael Mascia	16070-0005U	2412
24267	7590	02/06/2008		
CESARI AND MCKENNA, LLP 88 BLACK FALCON AVENUE BOSTON, MA 02210			EXAMINER PATEL, TAJASH D	
			ART UNIT 3765	PAPER NUMBER
			MAIL DATE 02/06/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/776,412

Applicant(s)

MASCIA, MICHAEL

Examiner

Tejash D. Patel

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10/9/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 3,13,15-18,23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-12,14,19-22 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 3, 15-18 and 23-24 pertaining have been non-elected and withdrawn by the Applicant in reply filed on 4/6/07.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 4-12, 14,19-22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sacks (US 4,774,724) in view of Crispin (US 5,465,425).

Sacks discloses a protective assembly with a removable base layer made of clothing (5) having integral fasteners of hook and loop fasteners (12) on at least outward facing surface thereof with a plurality of protective layers/packs (13) being smaller than the base layers being attached thereto which corresponds to the nerves or bones as shown in figure 1. The protective layers/packs are encased within a removable cover material (14) having protective material of both an impact absorbing material (17) and a rigid material (15) as shown in figure 2. However, Sacks does not show the plurality of protective layers/packs being attached at a given location.

Crispin discloses a plurality of pockets/packs with each of the packs having integral hook and loop material that are attached at a given location as shown in figure 1.

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Sacks on col. 4, lines 41-42, states that two or more packs can be mounted as desired.

Thus it would have been obvious to one skilled in the art at the time the invention was made to recognize that the two or more packs of Sacks can be mounted at a given location as desired by each of the packs having integral hook and loop material as taught by Crispin so that the required level of protection can be achieved at a specific location or depending on the end use thereof.

***Response to Amendment***

4. The amendment and arguments filed on October 9, 2007 has been considered. In view of such a newly discovered prior art has prompted this office action to be made new-non Final and the arguments are moot.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The examiner's supervisor Mr. Gary Welch can be reached at (571) 272-4996. The fax phone number for this group is (571) 273-8300.

January 31, 2008



**TEJASH PATEL  
PRIMARY EXAMINER**